IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7477 of 1999

with

SPECIAL CIVIL APPLICATION No 7657 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATL TARABEN SOMABHAI & ORS.

Versus

VIDYA SAHAYAKS SAMITI

Appearance:

1. Special Civil Application No. 7477 of 1999
   MR KB PUJARA for Petitioner No. 1
   MR ND GOHIL, ASSTT.GOVERNMENT PLEADER for Respondent No. 1
   MS SANGEETA PAHWA for Respondent No. 2
2. Special Civil Application No. 7657 of 1999
   MR ANIL S DAVE for Petitioner No. 1
   MR ND GOHIL, ASSTT.GOVERNMENT PLEADER for Respondent No. 1
   MS SANGEETA PAHWA for Respondent No.2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 15/09/2004

ORAL JUDGEMENT

In these petitions, since similar questions of law and facts arise, the petitions have been heard together and are being disposed of by a common judgement.

2. In these petitions, the petitioners are challenging the action of the respondents in not giving them appointments to the post of Vidhya Sahayak on the basis of the merits secured by them as calculated by the authorities as per the prevailing Rules and Regulations.

2. In Special Civil Application No. 7477 of 1999, the sole petitioner has stated that she is holding the qualification of SSC with PTC. For the purpose of recruitment of the primary school teachers, the respondent had issued an advertisement on 10.4.1991. In response to the said advertisement, the petitioner had applied. According to the petitioner, the selection process was carried out in the year 1991-92 and though the select list was never published, the respondents made appointments of several candidates, some of whom, according to the petitioner, had less marks on merits and the petitioner, who was having 63.44 per cent of marks on merit was not given appointment.

3. It appears that some of the persons appointed pursuant to the advertisement dated 10.4.1991, who were sought to be terminated by the authorities, approached this Court by filing Special Civil Application No.5389 of 1994 and other connected matters. The said group of petitions came to be disposed of by a common judgement on 15/21-9-1994. The learned Single Judge in the above decision was pleased to quash and set aside the orders of termination of those petitioners. Admittedly, the present petitioner had not approached any Court of law seeking appointment pursuant to the said selection process carried out in the year 1991-92.

4. The petitioner has further pointed out that by judgement dated 13th August, 1998 in Special Civil Application No. 5218 of 1998 and connected matters, this High Court gave certain directions to the State Government to modify the Vidhya Sahayak Scheme (which had by then been brought into force by the State Government and appointments have been made to such posts) to incorporate provision with a view to accommodate the candidates in the select list of the District Education Committees and Nagar Shikshan Samitis with a view to consider them for appointment as Vidhya Sahayaks after

granting age relaxation. For the purpose of dealing with the complaints with respect to the implementation of the Vidhya Sahayak Scheme, a single member or a multi member committee was ordered to the constituted. Certain consequential directions were also given in the said judgement. The following are the directions given by the High Court in the above mentioned decision:-

"(1) The State Government is directed to suitably modify Vidhya Sahayak Scheme to incorporate provision, with a view to accommodate the candidates in the select list of District Education Committees and Nagar Shikshan Samitis with a view to consider them for appointment as "Vidhya Sahayaks". Appropriate provisions shall be made for relaxation of age limit.

(2) The Government shall constitute a single member or multi member Committee as it deems proper, at the State level under the Chairmanship of the Officer not below the rank of Special Secretary or Joint Secretary, to deal with and take effective decision on the complaints with respect to implementation of the Vidhya Sahayak Scheme. The Committee will meet at least once a week at the scheduled time and place to hear such complaints. Directions given by such Committee will be of binding nature on all concerned. The Committee will not necessarily require to follow rigid procedure except following the principle of natural justice to the extent possible. The Committee will also monitor effective implementation of the Vidhya Sahayak Scheme so as to ensure that the entire process of appointment is complete by the end of September, 1998, time already fixed by the Government. It will be open for the Committee to adopt appropriate strategies to achieve the object including issuing oral instructions and collecting oral information depending upon the exigencies. The life of the Committee shall be initially for a period of three months from the date of its constitution.

(3) All the Civil Courts in the State of Gujarat are restrained from entering any suit and/or granting injunction in the matter of appointment of Vidhya Sahayaks, for a period ending 31.3.1999.

(4) The remedy before the said Committee shall be considered as an effective alternative remedy for the purpose of petition before this Court under

Article 226 or 227 of the Constitution of India.

(5) The respondents will also provide the life of the select list.

(6) While determining the vacancies, future vacancy shall not be included and they will be left for the next year's selection.

(7) Appropriate publicity shall be given with respect to the constitution of the Committee and amendment of Vidhya Sahayak Scheme with respect to the provisions for appointment from the select list of 19890-1996 referred to above.

(8) The validity of "Balguru" as well as "Vidhya Sahayak" Schemes has been considered in this group of Special Civil Application and therefore it will not be open for any party to raise any contention in that regard before the said Committee.

(9) No appointment under "Vidhya Sahayak Scheme" shall be made till such a clearance is given by the Committee referred to above. The Committee before giving such direction will wait for a reasonable time so that if anybody has any grievance the same may be considered by the Committee.

(10) The petitioners in each petition are relegated to the remedy before the Committee referred to above.

(11) Rule made partly absolute in each Special Civil Application to the aforesaid extent."

5. It is the case of the petitioner that pursuant to the said directions, a Committee was also constituted by the Government (which will be referred to as "the Committee" hereafter in this order) and large number of persons made representations to the Committee and in fact in two separate lots, as many as 54 persons received appointments at the hands of the Committee to the post of Vidhya Sahayaks, many of whom had less merit than the petitioner. The petitioner therefore, made a representation to the Committee and when received no reply, approached this Court by filing Special Civil Application No. 4981 of 1999. By order dated 16th July, 1999, the said Special Civil Application No. 4981 of 1999 came to be disposed of directing the Committee to

decide the representation of the petitioner within a period of 15 days from the date of receipt of writ of the Court. Pursuant to the said order dated 16th July, 1999, the Committee by a speaking order dated 18th August, 1999, rejected the representation of the petitioner. The petitioner had therefore, challenged the decision of the Committee dated 18th August, 1999 in this petition and has also sought for the direction to give appointment to the petitioner as Vidhya Sahayak on the basis of her merit marks, on the ground that other candidates having less merits have already been appointed and they continue in service as Vidhya Sahayaks.

6. In Special Civil Application No. 7657 of 1999, the case of the petitioners is more or less similar to that of the petitioner in Special Civil Application No. 7477 of 1999. The petitioners herein also had applied in the year 1991, pursuant to the same selection process and when they did not receive the appointments, some of the petitioners have filed Special Civil Application before this High Court, details of which are indicated in paragraph 3 of the petition, which petitions according to the learned Advocate for the petitioners are still pending. In the present petition however, these petitioners are basing their claims more or less on the same footing as in the Special Civil Application No. 7477 of 1999 and contend that when persons with less merits are appointed and continued as Vidhya Sahayaks, the petitioners cannot be denied such appointments.

7. The learned Advocate Shri K.B. Pujara appearing for the petitioner in Special Civil Application No. 7477 of 1999 has contended before me that in the selection process which started pursuant to advertisement dated 10th April, 1991, there were 257 vacancies against which 442 appointments came to be made and large number of candidates who came to be appointed, were less meritorious than the petitioner. It is also the case of the petitioner that thereafter also number of persons with less merits were appointed in June, 1998 and the petitioner therefore, should have been directed to be appointed by the Committee. He has relied on the order dated 9th December, 1998, passed by the Committee and contended that the case of the petitioner being similar, the petitioner should also have received the appointment. Learned Counsel for the petitioner Shri K.B. Pujara has relied on the decision of the Hon'ble Supreme Court in the case of Shri Ashok Vs.State of Karnataka reported in AIR 1992 SC 80 and contended that since other persons who might be more meritorious than the petitioner also have not felt aggrieved and not approached this Court, this

Court is required to consider the case of the petitioner alone and if found that persons less meritorious than the petitioner are still in service, the petitioner should also be given the appointment.

8. Learned Counsel for the petitioner Ms. Banna Datta appearing for the petitioners in Special Civil Application No. 7657 of 1999 has adopted the arguments of learned Advocate Shri Pujara and has submitted that the petitioners in the said Special Civil Application also should be granted appointments to the post of Vidhya Sahayaks on the same basis that persons with less merits have been granted appointments.

9. Appearing for the respondents No.2 in both the petitions, learned Advocate Ms. Sangeeta Pahwa has strongly opposed the petitions. She has contended that the petitioners had not raised any grievance in the year 1992 and at this distant point of time, their complaints regarding any irregularity in the selection process of the year 1992 cannot be entertained. She has drawn my attention to paragraph 28 of the decision of this High Court in Special Civil Application No. 5389 of 1994 and other connected matters. In the said paragraph, this Court had observed that those candidates who are more meritorious and not called for interview have not filed any petition before the High Court or any other proceedings before any Civil Court of law. In that view of the matter, the Court was of the opinion that in the proceedings it would not be just and proper to open up a fresh line of litigation at the instance of the allegedly meritorious candidates who were not called for interview as such candidates had not come before the Court for claiming any relief. The learned Counsel for the respondent has also submitted that the appointments granted by the Committee in two separate orders totalling to 54 appointments were not legal and the appointees are sought to be discontinued. She has further pointed out that in fact the concerned respondent has already taken such an action but that such appointees have challenged the actions and the petitions are pending before this Court. She however, submits that the petitioners cannot base their claim on appointments given to some other persons solely because such appointees have less merits than the petitioner without there being any further right in favour of the petitioners especially when such appointments are sought to be cancelled as being illegal. She submits that the 54 candidates were directed to be appointed by the Committee solely on the basis of the fact that some candidates less meritorious than them were appointed in the year 1991-92 pursuant to the

advertisement dated 10.4.1991. This itself was contrary to the observations in para 28 of the decision dated 15/21.9.94 of the High Court given in Special Civil Application No. 5389 of 1994 and connected matters wherein it is observed that it would not be just and proper for the Court to open up a fresh line of litigation at the instance of allegedly meritorious candidates who were not called for interview as such candidates having not come to the Court of law and having not claimed any relief for redressal of their grievance. She submits that further giving appointments to the petitioners on the basis of such candidates would lead to endless process of perpetuating illegality.

10. Learned Counsel for the respondent No.2 has also submitted that the case of the petitioners herein would not come within the purview of the powers of the Committee since the Committee was constituted by the High Court for a different purpose and the actual terms of the Committee that came to be appointed by the Government also would not cover the cases of the petitioners since the petitioners' names did not figure in the select list of year 1992.

11. Learned Counsel has opposed the petitions on the ground that parity cannot be claimed for committing illegality and since the petitioners, according to her, have no independent claim or right to secure appointments, requests must fail.

12. The factual position involving in these petitions is more or less undisputed. The merits of the candidates seeking appointments either as primary school Teacher or Vidhya Sahayaks is to be considered on the basis of the Government circulars taking into account the marks obtained by the candidate in the SSC examination and in the PTC examination and such other relevant factors and the weightage to be given for the marks secured in each examination, is also provided for by the Government. In short, the percentage of marks assigned to each candidate is a purely mathematical formula and there is no scope for veriation or subjective consideration of the appointing authority. It is also not disputed that pursuant to the directions of this Court, the Committee was constituted to consider the complaints with respect to the appointments to the post of Vidhya Sahayaks and the Committee actually, so far as these petitioners are concerned, directed that the appointments to 54 candidates be made and actually such appointments were made. It is also not in dispute that the number of persons who secured appointments through the decision of

the Committee as mentioned above, had less merit marks than the petitioners in these petitions. The question however, is whether the petitioners can claim appointment solely on this basis without having regard to the number of vacancies available, the nature of appointments of such less meritorious candidates and the number of persons who may be more meritorious than the appointees as well as the petitioners. Along with the affidavit-in-reply, the respondents have produced a letter dated 16th July, 1999, written by the respondent No.2 to the Chairman of the Committee, wherein it is stated that in the general stream between the last selectee out of 54 candidates appointed as directed by the Committee and those selected earlier in the year 1991-92, there is a gap of about 6% marks and there would be as many as 1556 candidates who would come between these two categories. In other words, if the cut-off line of 63.11 marks (obtained by the last of the 54 candidates appointed by the direction of the Committee) is to be adopted, as many as 1556 candidates would be above the said cut-off marks and who have not got appointments. Similar comparison is given for reserved categories as well and according to the said data, by considering the persons who were already appointed with persons appointed with less merit marks, there would be as many as 2747 candidates who have more marks than these candidates but have not secured appointments. These figures have not been disputed by the petitioners. In any case, it is undisputable that there are large number of persons who are more meritorious than the petitioners who have not received appointments. The question therefore, is whether the petitioners can be given appointments solely on the basis of some persons less meritorious than the petitioners having been appointed at the instances of the Committee? The entire issue has to be considered in the background of the above facts and keeping in mind the judicial pronouncements in this regard.

13. In the decision of the Hon'ble Supreme Court in the case of State of Madhya Pradesh Vs. Ramesh Kumar Sharma , reported in AIR 1994 SC 845, when compassionate appointment was sought on a particular post, the Hon'ble Supreme Court observed that respondent is not entitled to a higher post of his choice merely because he fulfils the requisite eligibility qualifications and the fact that another person was so appointed in similar circumstances even assuming that the same is true, the applicant has no right to any particular post of his choice and he can only claim to be considered for the post. It was further observed that it would be ultimately for the authority to

decide if some common principle was involved in to cases and if some mistake was committed in earlier case there cannot be a ground for directing the State to perpetuate the error for all times to come.

14. In the decision of the Hon'ble Supreme Court in Gursharan Singh & anr. V. New Delhi Municipal Committee & others, reported in (1996) 2 SCC 459, when allotment of shops was sought by the petitioners on the basis that some other similarly situated persons were so allotted, the Hon'ble Supreme Court observed that under Article 14, guarantee of equality before law is a positive concept and it cannot be enforced by citizen or Court in a negative manner. If an illegality or irregularity has been committed in favour of an individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of the Supreme Court, that the same irregularity or illegality be committed by the State or an authority which can be held to be a State within the meaning of Article 12 of the Constitution of India, so far such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. In paragraph 9 of the said decision, following observations have been made.

"Apart from that even if it is assumed that concession was shown to such stall holders by the NDMC, the appellants cannot make grievance in respect of discrimination under Article 14 of the Constitution having agreed to the terms of allotment they cannot legitimately claim that they should also be treated in the same manner. There appears to be some confusion in respect of the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. This guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or Court in a negative manner. To put it in other words, if an illegality or irregularity has been committed in favour of any individual or a group of individuals, others cannot invoke the jurisdiction of the High Court, nor of this Court, that the same irregularity or illegality be committed by the State or an authority which can be held to be a State within the meaning of Article 12 of the Constitution, so far such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such petitioners can question

the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favour or principle of equality before law. Neither Article 14 of the Constitution conceives within the equality this concept, nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination. None of the 98 stall holders was impleaded as party to the writ petitions. The appellants questioned the validity of the allotment of 98 shops on concessional rates, without trade zoning restrictions in favour of the stall-holders of Panchkuian Road, but they were primarily interested that same concessions in respect of licence fee and relaxation in trade zoning restrictions, be also extended to them. Any such claim on their behalf cannot be entertained on the basis of concept of equality before law as enshrined in Article 14 of the Constitution."

15. In the decision of the Supreme Court in State of Haryana & ors. Vs. Ram Kumar Mann, reported in (1997) 3 SCC 321, the apex Court once again reiterated that to seek relief under Article 14 of the Constitution of India, the petitioner must have an enforceable right, and relief wrongly given to others cannot be claimed. In paragraph 3 of the decision, the following observations have been made.

"The question, therefore, is whether the view taken by the High Court is correct in law. It seen that the respondent had voluntarily resigned from the service and the resignation was accepted by the Government on 18.5.1982. On and from that date, the relationship of employer and the employee between the respondent and the State ceased and thereafter, he had no right, whatsoever, either to claim the post or a right to withdraw his resignation which have clearly become effective by acceptance on 18.5.1985. It

> may be that the Government for their own reasons have given permission in similar case, to some of the employees mentioned earlier, to withdraw their resignations and had appointed them. The doctrine of discrimination is founded upon existence of an enforceable right. He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly, circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them, i.e. benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing misappropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service, can a similarly circumstanced person claim equality under Section 14 for reinstatement? The answer is obviously "No". In a converse case, in the first instance, one may be wrong, but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. As stated earlier, this right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right. Under these circumstances, the High Court was clearly wrong in directing reinstatement of the respondent by a mandamus with all consequential benefits."

16. In yet another decision of the Hon'ble Supreme Court in State of Bihar & ors. V. Kameshwar Prasad Singh and ors. reported in (2000) 9 SCC p. 94, once again the Hon'ble Supreme Court has observed that equality clause enshrined in Article 14 is a positive concept and cannot be enforced in negative manner and benefits extended to some persons in an illegal or irregular manner cannot be claimed by others on the plea of equality and wrong order or judgement passed in favour of one person would not entitle others to claim similar benefits. The Hon'ble Supreme Court was further pleased to observe that when the High Court wrongly allowed the claim of seniority of one person in his writ petition,

another incumbent cannot claim fixation of seniority on that basis by filing a writ petition before the High Court. In paragraph 30 of the said decision, the following observations were made.

"The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals, others cannot claim the same illegality or irregularity on the ground of denial thereof to them. Similarly, wrong judgements passed in favour of one individual does not entitle others to claim similar benefits. In this regard this Court in Gursharan Singh V. New Delhi Municipal Committee held that citizens have assumed wrong notions regarding the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality as enshrined in Article 14 of the Constitution by way of a writ petition filed in the High Court. The Court observed: (SCC p.465, para 9).

"Neither Article 14 of the Constitution conceives within the quality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process, there has been a discrimination."

Again in Secy. Jaipur Development Authority V. Daulat Mal Jain this Court considered the scope of Article 14 of the Constitution and reiterated its earlier position regarding the concept of equality holding: (SCC pp.51-52, para 28).

"Suffice it to hold that the illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to

> the respondent or to repeat or perpetuate such illegal order, nor could it be legalised. In other words, judicial process cannot be abused to perpetuate the illegalities. Thus, considered, we hold that the High Court was clearly in error in directing the appellants to allot the land to the respondents."

17. In the decision of the Hon'ble Supreme Court in State of Orissa Vs. Dr. Sivasanker Lal Bajoria, reported in 1994 Supp (3) SCC 434, the apex Court was considering a case where the High Court although finding that the respondent was eligible at the time of the appointment of the first candidate and that non-consideration of his case was unjustified, refusing to examine the validity of the second appointment but directing the respondent to be considered for promotion to the post in question with effect from the date when the first appointment was made thereto, found that in absence of the declaration that appointment made earlier was illegal as the High Court has specifically declined to go into the question, there is no vacant post existing for consideration of the claim of the petitioner and in that situation, the order of the High Court becomes unworkable.

18. Keeping the above legal principles in mind and reverting back to the facts of the present case, I find that the sole basis on which the petitioners are seeking appointment on the post of Vidhya Sahayaks is that some other candidates less meritorious than the petitioners are ordered to be appointed by the Committee. That in itself, in my opinion, would not be sufficient to give direction in favour of the petitioners for being appointed to the post of Vidhya Sahayaks, without having regard to number of other questions such as the availability of vacancies at the relevant time, the nature of appointments of such less meritorious persons and whether the petitioners would be the only candidates who would have to be considered if those principle is adopted and applied. If there were no vacancies at the relevant time, the mere fact that some less meritorious candidates had been appointed at the relevant time would not permit this Court to give directions in favour of the petitioners and to order their appointments. Such directions would be unworkable. Since legality of the appointments of those allegedly less meritorious candidates are being considered separately in group of petitions filed by such candidates, it is neither possible, nor proper on my part to make any observations with respect to the legality of such appointments. I

however, cannot ignore the fact that the concerned respondents had, treating the appointments as illegal, sought to terminate them from service. I also cannot ignore the fact that those 54 persons received directives for appointment by the Committee solely on the basis that some less meritorious candidates had been appointed as primary school teachers in the year 1991-92 pursuant to the advertisement dated 10.4.1991 and the fact that in the order dated 15.9.1994, passed in Special Civil Application No. 5389 of 1994 and connected matters, this Court had guarded against, such a chain reaction by observing in para 28 that "..... I am of the opinion that in the present proceedings it would not be just and proper for this Court to open up a fresh line of litigation at the instance of allegedly meritorious candidates who were not called for interview as such candidates having not come to the Court of law and having not claimed any relief for redressal of their grievance from this Court, in my opinion such a class of candidates shall have to be excluded from consideration and question shall have to be examined vis-a-vis those candidates who were called for interview by the selection Committee." It is therefore, not possible to accept this contention of the learned Counsel for the petitioners that until such appointments are actually cancelled and until this Court decides the legality of the same, the petitioners herein must receive appointments being more meritorious than those candidates. As observed earlier, the Hon'ble Supreme Court has time and again stated that rule of parity enshrined in Article 14 and 16 cannot be claimed in a negative manner and the petitioners must base their claims on some legal footing. There cannot be parity in illegality and illegality committed by the State in favour of other persons, would not justify this Court giving directions to the State to commit such illegality in favour of other candidates as well. As mentioned above, there were more than 2000 candidates who have not been given appointment, but are more meritorious than those persons appointed and whose appointments are sought to be cancelled by the respondent No.2.

19. As discussed earlier, the sole basis of the case of the petitioners herein is that some other candidates with less merits have already been appointed and that by itself should be sufficient for petitioners to secure such treatment for appointment. Such a contention cannot be accepted. Acceptance of such a contention would lead to disastrous consequences and the State would be burdened with giving appointments to endless number of persons without having regard to the availability of vacancies, simply because some candidates have somehow

received such appointments, though strictly not coming within the merit list. Any such direction would be unworkable. Secondly, such a direction would also be contrary to the decisions of the Hon'ble Supreme Court cited above, wherein it is categorically stated that the Court cannot direct that the State should perpetuate illegality and there cannot be any equality or parity in illegality. Since I find that the petitioners have no independent legal right to receive appointments, and the sole basis for seeking appointment being that some other candidates having less marks have secured appointments, I do not find any justification to give directions as prayed for by the petitioners in the present petition, considering the facts and circumstances arising in these petitions. The reliance placed by the learned Advocate for the petitioners on the decision of the Hon'ble Supreme Court in Shri Ashok alias Somanna Gowda Vs. State of Karnataka, reported in AIR 1992 SC 80 is also not well founded. In the said decision, two of the candidates who had appeared before the Selection Committee were interviewed but not placed in the select list on the ground that the total marks obtained in qualifying written examination and the oral interview did not merit their inclusion in the select list. The Hon'ble Supreme Court found that 33.3% marks allotted to viva voce test was excessive and also found that had the weightage of viva voce marks was being kept to 15%, the candidates in question before the Supreme Court would have been selected on the basis of such marks and in that view of the matter, the apex Court was pleased to give reliefs only to the appellants observing that they were vigilant in making grievance and approaching the Tribunal in time and the other candidates cannot be considered as they were never approached for redressal of their grievance within reasonable time. Facts of the present case are vastly different. The petitioners are claiming appointments solely on the basis of some persons having less marks having been appointed without having any regard to the nature of such appointments, the availability of vacancies and other attending relevant circumstances, including the fact that the authorities have found that such appointments were illegal and are said to be discriminatory and have actually passed orders cancelling the appointments. Such direction cannot be given in view of the fact that the petitioners herein have otherwise no independent legal right to claim such appointment. In view of the above discussion and also in view of the fact that even if the Committee did not have the jurisdiction to consider the cases of the petitioners as contended by the learned Counsel Ms. Pahwa, it was always open for the petitioners to approach this Court

and to seek the reliefs if they are in a position to establish their legal rights, I do not decide the question of the jurisdiction of the Committee as raised by the learned Counsel Ms. Pahwa, as I do not find it necessary to go into the said question.

To conclude that, the petitioners have no legal rights to seek appointments and the petitions therefore fail and are hereby rejected. Rule is discharged in each matter with no order as to costs.

(Akil Kureshi, J.)

*/Mohandas